



The Compliance Connection

Regulatory News for Virginia Mortgage and Consumer Finance Companies
State Corporation Commission -- Bureau of Financial Institutions

The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage, consumer finance, industrial loan and non-profit debt-counseling agency licensees and other interested parties. It is the licensee's responsibility as a Virginia mortgage licensee to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, Virginia 23218-0640 or via e-mail at: nwalker@scc.state.va.us.

Special thanks to Susan Hancock, George Latham, Nick Kyrus, Melissa McCollum, Jon Orne, Jane Owen, Todd Rose and Karen Sullivan for their contributions to this issue!



Financial Information Safeguards Rule

Have you developed a comprehensive security program to ensure the security and confidentiality of customer information? If not, you may be in violation of the Federal Trade Commission's (FTC's) Safeguards Rule, which went into effect May 23, 2003.

Financial institutions covered by the Safeguards Rule include companies that broker, make or service consumer loans, transfer or safeguard money, prepare individual tax returns, provide financial advice or credit counseling, provide residential real estate settlement services, and/or collect consumer debts. Such companies must comply with the Rule.

According to the FTC's May 23, 2003 press release, financial institutions subject to the Safeguards Rule must implement an information security program as follows:

- Designate an employee or employees to coordinate the program;
- Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information and assess the sufficiency of any safeguards in place to control the risks;
- Design and implement safeguards to address the risks and monitor the effectiveness of these safeguards;
- Select and retain service providers that are capable of maintaining appropriate safeguards for the information and require them, by contract, to implement and maintain such safeguards; and

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Did you know...

- ...there is a new statute that requires mortgage licensees to send written notification to the Commissioner if certain events occur? Events that require notification include: filing for bankruptcy or reorganization by the licensee; institution of revocation or suspension proceedings against the licensee by any state or governmental authority; denial to engage in business by any state or governmental authority; and any felony indictment or conviction of the licensee or any of its employees, officers, directors or principals. The Commissioner may identify by rule other events that will require notification. Reference §6.1-425.2 of the Code of Virginia.
- ...it is the Bureau's position that third-party processors and telemarketers fall under Virginia's definition of *mortgage broker* and must be licensed as such unless they are exempt from licensing under §6.1-410 or §6.1-411 of the Code of Virginia? This position was discussed in previous newsletter articles (April 1999 and June 1996) titled "Intermediate Mortgage Activities." These intermediate mortgage activities include any activity that may facilitate bringing a potential mortgage borrower together with a mortgage lender for compensation which includes processing and telemarketing. These activities involve "dealing with" or "managing" part of the mortgage loan process. Processing leads to the completion of documentation and underwriting requirements and facilitates the making of mortgage loans. Telemarketing directs a potential borrower to a mortgage lender or broker. You may obtain application forms from our Web site (www.state.va.us/scc/division/banking) or contact the Bureau's Licensing Section at (804) 371-9690 if you have questions about the application requirements or process.
- ... if mortgage brokers image loan files for storage, the *original* broker agreement must be retained in a licensed office in order to comply with §6.1-417 of the Code of Virginia?

Recent Payoff Complaints:

Once again, we are receiving an increased number of complaints concerning difficulties in receiving payoff information from lenders. The complainants state some lenders are not responding to written payoff requests made by the property owner's designee (i.e.: attorney, or mortgage lender or broker with whom they have filed a loan application). Such lenders are claiming the payoff request must come from the property owner. Other complaints revolve around the lender's refusal to

accept a faxed written request. It is the Bureau's view that a faxed request for loan payoff information is a "written request" within the meaning of §6.1-330.82 of the Code of Virginia.

The above referenced section requires the holder of the note secured by a deed of trust or mortgage on Virginia property to mail or deliver a written statement of the payoff amount **within 10 business days** of the receipt of a written request from the property owner **or his designee** (provided the request contains the loan number and address or other description of the subject property). Such request for payoff information may be made one time within a 12-month period **without charge**, and a fee **not to exceed \$15** may be charged for each additional request within such period.





Photocopying Driver's Licenses: Follow the Law

Recently, Bureau examiners have found that some licensees have been photocopying driver's licenses. Many financial institutions use driver's licenses as a form of identification. While driver's licenses can help to identify an individual, the Code of Virginia prohibits reproduction of driver's licenses without prior written permission from the Department of Motor Vehicles (DMV).

Section 46.2-346A (4) of the Code of Virginia states that no person shall "Reproduce by photograph or otherwise, any driver's license, temporary driver's permit, or learner's permit issued by the [DMV] without obtaining prior written consent of the [DMV]." DMV staff advised the Bureau that based on the current statutory language covering this requirement, every licensee (not each branch) must apply for permission to photocopy driver's licenses.

Licensees may apply for permission by writing to Commissioner D.B. Smit, Virginia Department of Motor Vehicles, P.O. Box 27412, Richmond, Virginia 23269-0001, Attention: Pat Deluke.

Safeguards Rule (continued from page 1)

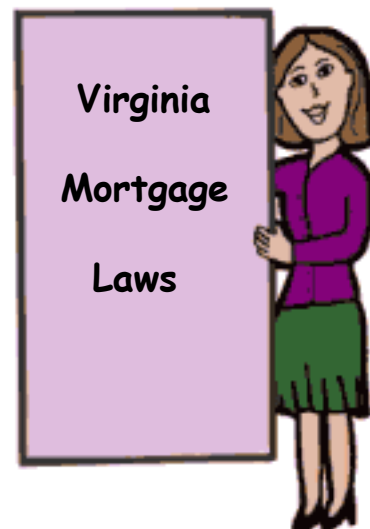
- Adjust the information security program in light of developments that may materially affect the program.

Each information security program must include these basic components; however, companies are allowed to select specific safeguards that are appropriate to their size and complexity, the nature and scope of their operations, and the sensitivity of the customer information maintained.

Check out the FTC's Web site (www.ftc.gov) to find more information about the Safeguards Rule and tips on developing your information security program.

Attention New Mortgage Licensees:

Friday, February 20, 2004 is the date of the next orientation for new mortgage lender and/or broker licensees. Companies that are licensed between October 1, 2003 and December 31, 2003 will receive information about the session. Orientation begins at 9:30 a.m. at our office and concludes around 3:00 p.m. Licensees who were unable to attend previous sessions should also register. Space is limited, but we will make every attempt to accommodate interested parties. Call Carol Foster at (804) 371-9701 to register!





IMPORTANT COMMISSION TELEPHONE NUMBERS

Consumer Finance and Mortgage Examinations(804) 371-9701

Licensing (applications, name changes, relocations).....(804) 371-9690

Consumer Complaints.....(804) 371-9705

Banks and Savings Institutions.....(804) 371-9704

Corporate Information – Clerk's Office.....(804) 371-9733

FAX Number for the Bureau of Financial Institutions.....(804) 371-9416

Annual Reports Due:

Mortgage lenders and/or brokers and consumer finance companies licensed by the Bureau of Financial Institutions are each required to file an Annual Report with the Bureau. These reports pertain to the business conducted and should not be confused with the corporate annual report (filed with the Office of the Clerk) required of companies. The annual report forms were mailed to licensees in December 2003; however, copies of each type of annual report form are also available on the Bureau's Web site at: www.state.va.us/scc/division/banking/vareport.htm.

The due dates for the annual reports are as follows: Mortgage Annual Report - due by March 1, 2004; Consumer Finance Annual Report - due by April 1, 2004

Common tips for filing annual reports:

- 1) Strictly follow the instructions for each report. If you need assistance, call the individuals listed below.
- 2) File the report in duplicate.
- 3) Make sure the report is complete, signed by a senior officer of the licensee, and notarized.
- 4) Do not send money with the report. Assessments will be mailed to mortgage licensees by April 25, 2004 and to consumer finance licensees by May 1, 2004, with payment due within 30 days afterward.
- 5) Do not report business that is not conducted pursuant to the license granted, unless specifically requested. (For example, mortgage licensees should report only loans made to individuals who will use the proceeds primarily for personal, family, or household purposes and which loans are secured by the deed of trust on any interest in one- to four-family, residential, owner-occupied property located in the Commonwealth).
- 6) Attach a financial report (audited, if available) for the licensee, including a balance sheet and income statement. (Each consumer finance licensee should also include a financial report, audited if available, for its parent company.) If audited reports are not available by the deadline, indicate with the submission of the annual report the date that the audited financial statement is expected to be filed.
- 7) Submit the report to the Bureau by the deadline. The statutes governing the filing of the reports do not provide for extensions of time. Failure to file the annual report by the due date may result in regulatory action (fines or revocation of license).

Annual reports are processed by the Bureau's Corporate Structure and Research Section. For questions regarding annual reports filed by mortgage companies, contact Robert Mednikov at (804) 371-9692; for questions regarding annual reports filed by consumer finance companies, contact Karen Sullivan at (804) 371-9372. General questions may also be directed to (804) 371-9690.



License Update

The following is a list of companies that have surrendered their licenses, had their licenses revoked, had an application denied, or been fined by the Commission since August 15, 2003. This list should be helpful to keep track of companies with which you do business. These lists are accurate as of November 15, 2003. Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. A list of current mortgage licensees is available on our Web site at www.state.va.us/scc/division/banking/vamortgagelist. Also available on the Web site is a list of regulatory actions taken by the Commission since 1995 (penalties paid, license revocations, application denials). This information may be found at: www.state.va.us/scc/division/banking/violate.

Mortgage License Surrenders:

MB – 1438 C & P Financial Consulting, Inc. d/b/a C & P Mortgage Company – 8/15/03
MB – 2021 Semere Ambaye d/b/a H & R Mortgage & Financial Services – 8/20/03
ML – 226 HomeGold, Inc. – 8/22/03
MB – 1944 Ace Mortgage, Inc. – 9/9/03
MB – 1297 Nelson D. Rodgers t/a All Virginia Mortgage Co. – 9/15/03
ML – 440 Oxford Capital, LLC – 9/15/03
MB – 831 Joseph Christopher Nassief d/b/a The Mortgage Exchange Service – 9/16/03
MB – 1725 Erie Financial Group, LTD – 10/6/03
MLB – 827 BLS Funding Corp. – 10/7/03
MB – 1282 Star City Mortgage, Inc. – 10/23/03
MB – 1746 Michael C. Miller – 10/28/03
MLB – 761 Best Mortgage and Financial Services, Inc. – SURRENDERED LENDER AUTHORITY
ONLY 10/29/03 – NOW LICENSED AS MB — 2381

Mortgage Revocations:

ML – 88 Relocation Financial Services, Inc. – 8/15/03 – for failure to continuously maintain surety bond pursuant to §6.1- 413 of the Code of Virginia

Penalties Paid:

MLB – 311 American Home Finance, Inc. – 10/8/03 – paid settlement of \$15,000 for various violations of the Mortgage Lender and Broker Act
MB – 1407 Beacon Home Mortgage, LLC – 10/20/03 – paid settlement of \$2,500 for failure to timely respond to a Bureau request, as required by Regulation 10 VAC 5-160-50 of the Virginia Administrative Code
Thomas Yost, Sr. – 11/20/03 – paid settlement of \$1,000 for failing to obtain Commission approval prior to acquiring more than 25% of the stock of Calvert Mortgage Corporation, LLC (MB – 1369), in violation of §6.1-416.1 of the Code of Virginia

The following licensees paid settlements of \$500 for failure to file the annual report by March 1, 2003, as required by §6.1-418 of the Code of Virginia:

MLB – 678 Americorp Credit Corporation – 11/20/03
MB – 1407 Beacon Home Mortgage LLC – 11/20/03
MB – 882 First American Mortgage Services, Inc. – 11/20/03
MB – 1602 First Virginia Carolina Mortgage, Inc. – 11/20/03
MB – 548 Metfund Mortgage Corporation – 8/12/03
MB – 751 Pumphrey Financial Group, Inc. d/b/a American Mortgage Services, a division of Pumphrey Financial Group, Inc. – 11/20/03
MB – 1406 Skyline Mortgage Group, LC – 11/20/03
MB – 1797 Wholesale Express Mortgage Corporation, Inc. – 11/20/03



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IMPORTANT REGULATORY INFORMATION ENCLOSED!